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Board, Regional Water Quality Control Boards,
15 State Energy Resources Conservation and
Development Commission

16 UNITED STATES BANKRUPTCY COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 In re:
20 PG&E CORP.,
Debtor.

CASE NO. 19-30088
Chapter 11

21 In re:
22 PACIFIC GAS AND ELECTRIC
23 COMPANY,
24 Debtor.

CASE NO. 19-30089
Chapter 11

Date: January 31, 2019
Time: 10:00 a.m.
Place: 450 Golden Gate Avenue
16th Floor
San Francisco, CA 94102
Judge: Honorable Dennis Montali

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27 **PRELIMINARY OBJECTION TO CUSTOMER PROGRAMS MOTION**
28 **[DOCKET NO. 16]**

1 The California Department of Toxic Substances Control, California Department of Water
2 Resources, State Water Resources Control Board, Regional Water Quality Control Boards and
3 State Energy Resources Conservation and Development Commission (collectively, the
4 “California State Agencies”) hereby file this preliminary objection to the Motion of Debtors
5 Pursuant to 11 U.S.C. §§ 105(a), 363(b), and 507(a)(7) and Fed. R. Bankr. P. 6003 and 6004 for
6 Interim and Final Orders (I) Authorizing Debtors to (A) Maintain and Administer Customer
7 Programs, Including Public Purpose Programs, and (B) Honor any Prepetition Obligations
8 Relating Thereto; and (II) Authorizing Financial Institutions to Honor and Process Related
9 Checks and Transfers (the “Motion”) based on the following:

10 1. The California State Agencies object to the Motion to the extent it seeks authority
11 from this Court to terminate one or more of the Customer Programs, including but not limited to
12 the Environmental Cleanup Programs, in violation of non-bankruptcy laws or obligations or to
13 use the proposed order on this Motion as a shield for non-compliance with non-bankruptcy laws
14 or obligations.¹ A proposed addition to the interim order is set forth in paragraph 5 below.

15 2. Paragraph 2 of the proposed interim order on the Motion provides that the Debtors,
16 in their business judgment, are authorized to, “. . . terminate, one or more of the Customer
17 Programs, including, without limitation, . . . the Environmental Cleanup Programs, . . . as they
18 deem appropriate, in the ordinary course of business, without further application to or Order of
19 the Court.”

20 3. Title 28, U.S.C. § 959(b) provides, in pertinent part, that, “a trustee, receiver or
21 manager appointed in any cause pending in any court of the United States, including a debtor in
22 possession, shall manage and operate the property in his possession as such trustee, receiver or
23 manager according to the requirements of the valid laws of the State in which such property is
24 situated, in the same manner that the owner or possessor thereof would be bound to do if in
25 possession thereof.” 28 U.S.C. §959(b).

26 4. The California State Agencies submit that it is not proper for the Court to
27

28 ¹ To the extent not otherwise defined herein, all capitalized terms shall have the meaning set forth in the Motion.

1 authorize the Debtors in the proposed interim order or otherwise to “terminate. . . as [Debtors]
2 deem appropriate, in the ordinary course of business, without further application to or Order of
3 the Court” the Environmental Cleanup or other programs that the Debtors are required to
4 administer under applicable non-bankruptcy law or to use the Court’s order as a shield for non-
5 compliance with non-bankruptcy laws and obligations. Indeed, the Motion states at page 32, lines
6 9-12: “With respect to the Environmental Cleanup Programs, any suspension or delay in
7 administering the Environmental Cleanup Programs is contrary to public health and welfare and
8 may exacerbate not only existing circumstances but the ultimate costs of cleanup as well.”²

9 5. The California State Agencies respectfully request that the following language be
10 included in the interim order on the Motion:

11 “Nothing in this Interim Order releases, excuses, or precludes the Debtors from
12 compliance with all applicable federal, state and local laws, regulations,
13 ordinances or with any injunctions, administrative orders, or agreements entered
pursuant to such non-bankruptcy laws, including, but not limited to the
Environmental Cleanup Programs.”

14 6. The California State Agencies have not had sufficient time to fully review the
15 Motion and other first-day motions filed by the Debtors in this case and reserve the right to assert
16 or join in other objections in connection with the final hearing on the Motion and other first-day
17 motions.

18 7. Neither this preliminary objection nor any subsequent appearance, pleading, proof
19 of claim, claim or suit is intended or shall be deemed or construed as:

20 (a) a consent by the California State Agencies to the jurisdiction of this Court
21 or any other court with respect to proceedings, if any, commenced in any case against or
22 otherwise involving the California State Agencies;

23 (b) a waiver of any right of the California State Agencies to (i) have an Article
24 III judge adjudicate in the first instance any case, proceeding, matter or controversy as to which a

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26 ² As referenced in the Debtors’ motion at page 25, lines 15-18, the Debtors are required by the
27 provisions of California Water Code Section 80000 et seq., and applicable orders of the
28 California Public Utilities Commission to act as billing agent for the Department of Water
Resources in the collection of charges for power purchased by the Department under Water Code
Section 80000 et seq. The Debtors’ duties as a billing agent to timely remit funds to the
Department continue notwithstanding the filing of this case.

1 Bankruptcy Judge may not enter a final order or judgement consistent with Article III of the
2 United States Constitution, (ii) have final orders in non-core matters entered only after *de novo*
3 review by a District Court Judge, (iii) trial by jury in any proceeding so triable in the Chapter 11
4 Cases or in any case, controversy, or proceeding related to the Chapter 11 Cases, (iv) have the
5 United States District Court withdraw the reference in any matter subject to mandatory or
6 discretionary withdrawal, or (v) any and all rights, claims, actions, defenses, setoffs, recoupments
7 or remedies to which the California State Agencies are or may be entitled under agreements, in
8 law or in equity, all of which rights, claims, actions, defenses, setoffs and recoupments are
9 expressly reserved hereby; or

10 (c) a waiver of any objections or defenses that the State of California, the
11 California State Agencies or any other agency, unit or entity of the State of California may have
12 to this Court's jurisdiction over the State of California, the California State Agencies or such
13 other agency, unit or entity based upon the Eleventh Amendment to the United States
14 Constitution or related principles of sovereign immunity or otherwise, all of which objections and
15 defenses are hereby reserved.

16 Dated: January 30, 2019

Respectfully submitted,

17 XAVIER BECERRA
18 Attorney General of California
19 MARGARITA PADILLA
Supervising Deputy Attorney General

20 By: /s/ Paul J. Pascuzzi

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22 PAUL J. PASCUZZI
23 FELDERSTEIN FITZGERALD
24 WILLOUGHBY & PASCUZZI LLP
25 Attorneys for California
26 Department of Toxic Substances Control,
27 California Department of Water Resources,
28 State Water Resources Control Board,
Regional Water Quality Control Boards, and
State Energy Resources Conservation and
Development Commission

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I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 400 Capitol Mall, Suite 1750, Sacramento, CA 95814. On January 30, 2019, I served the within documents:

By Electronic Service only via CM/ECF.

/s/ Lori N. Lasley
Lori N. Lasley